

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY L. TAYLOR,

Plaintiff,

vs.

TERRI GONZALEZ, Warden,

Respondent.

CASE NO.11cv01109 WQH (RBB)

ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation (ECF No. 19) issued by the Honorable Magistrate Judge Ruben B. Brooks recommending that the Court deny Petitioner's Petition for Writ of Habeas Corpus. (ECF No. 1).

**BACKGROUND**

**I. State Proceedings**

On May 1, 2008, in the Superior Court of California, County of San Diego, Anthony L. Taylor ("Petitioner") pled guilty to one count of attempted murder and admitted to two felony convictions. (Lodgment 12 at 10-12). On September 15, 2008, Petitioner filed a motion to withdraw his guilty plea, stating that he had been under stress, had taken an incorrect dose of medication, and had not adequately conferred with his attorney prior to entering his guilty plea. (Lodgment 1 at 36-37). On September 29, 2008, the court denied Petitioner's motion to withdraw his plea, and sentenced Petitioner to a prison term of 24 years. (Lodgment 12).

On October 27, 2008, Petitioner filed a notice of appeal (Lodgment 1 at 118) and

1 a petition for writ of habeas corpus (Lodgement 5) in the California Court of Appeal.  
2 After consolidating the appeal with the petition (Lodgment 6), the California Court of  
3 Appeal denied Petitioner relief on December 29, 2009. (Lodgment 7).

4 On February 2, 2010, Petitioner filed a habeas petition in the California Supreme  
5 Court. (Lodgment 10). On April 14, 2010, the California Supreme Court denied the  
6 petition without comment. (Lodgment 11).

## 7 **II. Federal Proceedings**

8 On May 19, 2011, Petitioner filed the Petition for Writ of Habeas Corpus  
9 (“Petition”) pursuant to 28 U.S.C. § 2254 in this Court. (ECF No. 1). In claim one,  
10 Petitioner alleges that his Fourteenth Amendment due process rights were violated  
11 because (1) he negotiated a plea agreement to receive a twenty-year prison sentence,  
12 and (2) the trial court denied his motion to withdraw his plea and improperly sentenced  
13 him to a prison term of twenty four years. In claim two, Petitioner alleges that his Sixth  
14 Amendment rights were violated when his trial counsel provided ineffective assistance  
15 of counsel by misadvising him on the length of his sentence during plea negotiations.

16 On October 31, 2011, Petitioner filed a Motion for Stay and Abeyance,  
17 requesting that the Court stay this action to permit him to file and exhaust a new claim  
18 in state court. (ECF No. 7). On August 23, 2012, the Court issued an Order denying  
19 the Motion for Stay and Abeyance. (ECF No. 16).

20 On June 4, 2013, the Magistrate Judge issued a Report and Recommendation  
21 recommending that the Court deny the Petition in its entirety. The Magistrate Judge  
22 recommended denying claim one on the ground that Petitioner has failed to provide any  
23 objective evidence that he entered into a plea agreement to receive a prison term of  
24 exactly twenty years. The Magistrate Judge recommended denying claim two on the  
25 ground that Petitioner has failed to adequately demonstrate that his counsel’s  
26 performance prejudiced his defense. (ECF No. 19). The Report and Recommendation  
27 concluded:

28 IT IS ORDERED that no later than July 5, 2013, any party to this  
action may file written objections with the Court and serve a copy on all

1 parties...

2 IT IS FURTHER ORDERED that any reply to the objections shall  
3 be filed with the Court and served on all parties no later than July 19,  
4 2013.

5 *Id.* at 31-32. To date, neither party has filed objections to the Report and  
6 Recommendation.

## 7 DISCUSSION

8 The duties of the district court in connection with a Report and Recommendation  
9 of a Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28  
10 U.S.C. § 636(b)(1). When a party objects to a Report and Recommendation, “[a] judge  
11 of the [district] court shall make a de novo determination of those portions of the  
12 [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1).  
13 When no objections are filed, the district court need not review the Report and  
14 Recommendation de novo. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.  
15 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).  
16 A district court may “accept, reject, or modify, in whole or in part, the findings or  
17 recommendations made by the magistrate judge.” Fed. R. Civ. P. 72(b); *see also* 28  
18 U.S.C. § 636(b)(1).

19 Neither party objected to the Report and Recommendation, and the Court has  
20 reviewed the record and the Report and Recommendation in its entirety. The Court  
21 finds that Petitioner has failed to demonstrate that he is entitled to relief pursuant to 28  
22 U.S.C. § 2254(d). The Court concludes that the Magistrate Judge correctly determined  
23 that the Petition should be denied. The Court adopts the Report and Recommendation  
24 in its entirety.

## 25 CERTIFICATE OF APPEALABILITY

26 Pursuant to Rule 11 of the Federal Rules Governing Section 2254 Cases, “[t]he  
27 district court must issue or deny a certificate of appealability when it enters a final order  
28 adverse to the applicant.” A certificate of appealability should be issued only where the  
petition presents “a substantial showing of the denial of a constitutional right.” 28

1 U.S.C. § 2253(c)(2). “[A] [certificate of appealability] should issue when the prisoner  
2 shows ... that jurists of reason would find it debatable whether the petition states a valid  
3 claim of the denial of a constitutional right and that jurists of reason would find it  
4 debatable whether the district court was correct in its procedural ruling.” *Slack v.*  
5 *McDaniel*, 529 U.S. 473, 484 (2000).

6 Although the Court has denied the Petition, the Court finds that Petitioner has  
7 raised colorable, nonfrivolous constitutional arguments with respect to Petitioner’s  
8 claim alleging ineffective assistance of counsel. The Court grants a certificate of  
9 appealability as to ground two of the Petition.

10 **CONCLUSION**

11 IT IS HEREBY ORDERED that the Report and Recommendation is ADOPTED  
12 in its entirety. (ECF No. 19). The Petition for Writ of Habeas Corpus is DENIED.  
13 (ECF No. 1). A certificate of appealability is GRANTED as to claim two. The Clerk  
14 of the Court shall close this case.

15 DATED: October 21, 2013

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17 **WILLIAM Q. HAYES**  
18 United States District Judge  
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